vendor of the securities may, in the like manner, rescind the contract.

Regulation 19 of Singapore's Securities Industry Regulations 1973, sets out *inter alia*, the contents of a contract note of stock broker in eleven items, including *inter alia* a statement that a broker is dealing as principal if he deals as such.

The said s. 34 and the Regulation 19 set out above purportedly gave a right to a purchaser in whose shoes the defendant was, at the time of the receipt of a contract note "Within Seven Days After The Receipt Of The Contract Note" to rescind the contract at the option of the purchaser, apparently.

The contract notes in question were all issued on various dates in the year 1985. The defendant said by its para 12A, that it sent its "Notice of Recission dated 7 June 1991, pursuant to s. 34(3) of the Act ...", that is, the Singapore's Securities Industry Act 1973. The seven days must have long expired.

Before any Court began to consider the applicability or otherwise e.g. of the three conditions in regard to an application for amendment as set out in the oft-quoted *Yamaha Motor Co. Ltd. v. Yamaha Malaysia Sdn. Bhd.* [1983] 1 MLJ 213 about *bona fides*, etc., I was struck by the uselessness of the proposed amendment.

As regards to the uselessness, the Court adopted the test to it as if the Court were faced with an application to strike out the proposed amendment on the ground of its disclosing no reasonable cause of action, please see *Jeyaratnam Joshua Benjamin v. Lee Kuan Yew* [1990] 2 MLJ 65. In adopting this test, the Court was of the view that it should not be allowed, because of the notice of rescission in question being given completely out of time.

Assuming the point had merit, I would have in any event refused it; exercising my discretion, coming as the application did at that stage of proceedings in the middle of trial, it would be grossly unfair to the plaintiff whose witnesses were all overseas to have them recalled when the amendment would have been apparent years ago if it was found tenable.

I could not also countenance the cavalier fashion of the repeated amendments when the Court felt enough was enough, as regards them, and this was also taken into consideration.

I therefore dismissed the application with costs.

NG KEAN TUCK & 3 ORS.

v.

KOH SIM LING & 2 ORS.

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[CIVIL SUIT NO. 22-317-92]
31 OCTOBER 1992

INJUNCTION: Application for interlocutory injunction to abate trespass by encroachment of property - Assertion of trespass unrebutted - Whether plaintiffs entitled to the injunction.

The plaintiffs and the defendants are the owners of land in Selayang sharing a common boundary. The defendants pursuant to the approval of the Yang di Pertua Majlis Daerah Gombak, put up a single storey dwelling house on their land.

The plaintiffs subsequently caused a survey to be done on their land and discovered that the defendants had trespassed into their land. The plaintiffs applied for an interim injunction to abate the defendants' trespass by encroachment of the plaintiffs' property.

The defendants' contended that because the District Office passed their plans, it must be inferred that their building must be within their own boundary.

Held:

[1] The survey plan clearly showed that the defendants had trespassed into the plaintiffs' land. The recent photographs taken of the properties show that the defendants' original house authorised by the Yang di Pertua Daerah Gombak has little resemblance to the building now standing on the property. The house has been extended by another concrete structure along a substantial portion of the common boundary.

[2] The plaintiffs assertion of trespass is unrebutted and therefore proven to the hilt.

[Plaintiffs application allowed with costs].

For the plaintiffs - L.C. Loh; M/s. L.C. Loh & Co.
For the defendants - Francis Goh; M/s. Chin & Rakan-Rakan

JUDGMENT

Mahadev Shankar J:

This is the plaintiffs' interlocutory application for an injunction to abate the defendants' trespass by encroachment of the plaintiff's property.

The plaintiff is the owner of the land comprised in Lot 20 Kampong Bahru Selayang and the building thereon described as No. 20 Jalan Besar, Selayang Baru, Selangor (the said land). It is a corner lot facing Jalan Besar, with a side road No. 8 on its Western Boundary. Immediately to the South and contiguous to the said land is the Defendant's land described as Lot 1 together with the house thereon described as No. Jalan 8A Selayang Baru. The Western Boundary of the Defendant's land also faces Jalan 8.

In 1983 the defendant submitted a plan to the Yang di Pertua Majlis Daerah Gombak to put up a single storey dwelling house on their land. The plan submitted (Drawing No, KF 28/82-1) includes a front left and rear elevation which is a clear pictorial representation of what the building looks like. This plan was approved in October 1983. The left and rear elevation does not include any reference to any fence at the rear of this building.

In April 1990 the plaintiff proposed to put up 3 shop-houses on its land. Prepatory to this the plaintiff engaged Mr. Yap Peng Seng a Chartered and Licensed Surveyor to survey its land. On 20 July 1990 Mr. Yap completed his survey and plans. His Survey Plan JPR 320655/T1 showed quite clearly that the defendants had trespassed into the plaintiffs' land. This trespass was constituted by a wooden fence on the plaintiff's land running parallel and along the length of the common boundary from a West to East direction. At the Eastern end the defendants had actually deviated from their original plans by extending their building beyond the common boundary.

By a letter dated 21 May 1991 the plaintiffs protested. The defendants refused to comply. A further letter followed on 15 November 1991. The defendants still refused. This action was filed in July 1992. An application *inter alia* for an interim injunction was also made with a supporting affidavit. It is important to emphasise that attached to this affidavit as Exhibit B is Mr. Yap's covering letter of 20 July 1990 and the relevant portion of the Survey Plan JPR 320655/T1 which shows the extent of the encroachment. This was served on the defendants in August 1992.

If the defendants meant to challenge this evidence it would have been a simple matter for them to engage a Licensed Surveyor of their own. They did not. Instead the defendants wrote a letter to the District Office on 19 June 1991 accusing the plaintiffs of trespassing into the defendants' land (when there was no evidence to this effect) and stating that the plaintiffs had complained that the defendants committed trespass. They invited the District Office to clarify the matter. There is no evidence of any reply to this letter. Another letter from the Biro Pengaduan Awam dated 6 December 1991 has been exhibited which has nothing to do with this case. The defendant's contention is that because the District Office passed their plans it must be inferred that their building must be within their own boundary.

I have been further assisted by some recent photographs of these properties. What they clearly show is that the defendant's original house authorised by the Yang di Pertua Daerah Gombak has little resemblance to the building now standing on the property. The single storey dwelling house appears to have been extended by another concrete structure along a substantial portion of the common boundary. In all the circumstances of this case it is highly questionable whether these extensions were permitted especially as the building itself seems to have been extended upwards to the same level as the plaintiff's first floor level.

There is to my mind no doubt whatsoever that the plaintiffs assertion of a trespass is unrebutted and therefore proven to the hilt. They are therefore entitled to the injunction which they seek and I so ordered.

Before buildings are erected, altered or demolished it is desirable and indeed it may be a legal requirement that the local authority be informed. I therefore directed that a copy of this judgment and the order of this Court be served on the Yang di Pertuan Pejabat Daerah Gombak so that he may cause such action to be taken as is required under the Building Bye Laws. It would also be desirable that the Building Inspector be ready with a report should the Court require one at the next hearing.

I would only add that although the plaintiff's Summons prayed for a declaration and damages in addition to an injunction the submission was confined to an injunction alone. Consequently I treated the defendant's procedural objections of which notice was only given five minutes before the hearing, as being of no consequence. The damages can be left for trial. The issue now is whether the proven trespass should be expeditiously abated.

Since no defence whatsoever was shown on the merits I ordered the defendants to pay the costs of this application.